

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 6, 2018 appellant, then a 40-year-old human resources officer, filed an occupational disease claim (Form CA-2) alleging that she suffered a severe anxiety attack that triggered an asthma attack when she attempted to start her vehicle on her way to work due to factors of her federal employment. She additionally alleged that factors of her federal employment aggravated her post-traumatic stress disease (PTSD). Appellant noted that she first became aware of her conditions on August 17, 2017 and their relation to her federal employment on July 12, 2018. On the reverse side of the claim form, the employing establishment indicated that she retired on August 8, 2018.

In an undated attached statement, appellant related that during a human resources symposium in August 2017 she broke out in hives and was short of breath. She explained that after she returned to work from vacation she felt winded and fatigued after minor activities due to an increase in work activity and travel. Appellant began to experience episodes during which she was short of breath and had to work intermittently, which increased her stress. The stress increased the usual amount of her panic/anxiety attacks, which then triggered asthma attacks. She related that the specific factors of her federal employment responsible for the aggravation of her conditions included management's upending of her work efforts, management's engagement in prohibited practices, management's violation of merit system principles, as well as management's retaliatory intimidation and harassment. Appellant related that she had suffered from PTSD since leaving the military in 2005 and had not previously experienced severe persistent asthma. She concluded that stress from work was aggravating her preexisting PTSD and causing her asthmatic bronchitis.

An undated employing establishment document signed by appellant indicated that she was a veteran and that she was receiving Veterans Affairs benefits for PTSD and sleep apnea, among other conditions.

In a development letter dated August 21, 2018, OWCP informed appellant that additional evidence was required to establish her claim. It advised her of the type of factual and medical evidence needed and attached a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

On March 24, 1997 OWCP received a supervisory personnel management specialist position description, and an October 4, 2017 memorandum of understanding which described human resource services and employing establishment expectations.

Appellant submitted multiple e-mails, texts, and other correspondence between herself and the employing establishment. These included, among other things, discussion of form filing and leave requests, confirmation of her retirement date, appointment of an acting HRC director, and witness statements.

By decision dated September 21, 2018, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish her alleged factors of federal employment.

OWCP received appellant's outpatient medical records from the employing establishment dated from 2013 to 2017 diagnosing major depressive disorder, PTSD with dissociative reaction, fibromyalgia, sleep apnea, and panic attacks. The records indicated that she had experienced intermittent depression and anxiety attacks since 2003.

May 31, 2018 medical records signed by Dr. Rabih Touma, Board-certified in internal medicine, indicated that appellant had previous emergency room visits for cramping in her chest. She previously had pneumonia and since had intermittent chest discomfort. Dr. Touma related that appellant felt like this was caused by her panic attacks and fibromyalgia. He conducted a physical examination, diagnosed PTSD and severe persistent asthma, and opined that appellant's chest pain could be due to asthma/bronchitis, panic attacks, fibromyalgia, or possibly vasospasm disease.

May 2018 medical records by Dr. Vijayalakshmi Kololgi, a Board-certified psychiatrist, indicated that appellant reported that she returned to work and experienced panic attacks and had trouble breathing. Appellant indicated that she was experiencing stress from work and worsening health issues. She conducted a psychiatric examination and diagnosed PTSD. OWCP continued to receive documents signed by physicians documenting a medical history of PTSD, stress, anxiety, and chronic obstructive pulmonary disease, and diagnosing severe persistent asthmatic bronchitis, sleep apnea, depression, and fibromyalgia.

An August 20, 2018 letter by Dr. Kololgi indicated that appellant was first diagnosed with PTSD and major depressive syndrome on August 2, 2013. She indicated that, in August and November 2017, appellant was hospitalized for shortness of breath and pneumonia. Dr. Kololgi indicated that appellant reported increased anxiety and lack of control over her symptoms and believed that her work environment negatively impacted her emotional and physical well being. She noted that appellant related that she had experienced difficulty maintaining her workload due to her increased absences, and that increased stress at work caused an increase in her anxiety and panic attacks. Dr. Kololgi opined that appellant's current health issues and stressors aggravated her current disability.

A September 4, 2018 letter by Dr. Chitturi Radha, Board-certified in internal medicine, opined that appellant's employment-related psychological stress was at least as likely to have aggravated her asthma as to have not. She related that there are several medical articles and studies that have established what appears to be a strong correlation between work-related physiological stress and an aggravation of asthma.

A September 5, 2018 letter by Dr. Divya Venkat, Board-certified in internal medicine, indicated that she treated appellant for severe persistent asthma since March 2018. She stated that she read appellant's statement of disability and had exclusively used the work factors described in the statement as the basis for her medical opinion. Dr. Venkat opined that the severe psychological stress that appellant described in her statement is the most likely cause of her asthma exacerbation, as many tests ruled out environmental allergens. She additionally explained how psychological stress can exacerbate asthma.

In a letter dated September 17, 2018, appellant provided answers to OWCP's development questionnaire. She indicated that her position as a director of a staff of 75 employees that serviced

20 offices across the nation was inherently stressful, and she related that she worked an average of 60 hours per week. Appellant stated that, on a daily basis, she faced a variety of challenges such as providing controversial information to colleagues and resolving issues while taking into account the interests of both the employee and employing establishment. She indicated that in August 2017 her employment conditions changed due to an increased workload, additional scrutiny of her work, lack of management support, and inadequate resources. Appellant stated that she experienced pressure from her supervisor to violate merit systems principles and commit prohibited personnel practices, which caused an intimidating work environment.

Appellant explained that her breakdown in July 2017 made her realize the profound impact that stress from employment was having on her physical health. She related that severe, persistent asthma symptoms appeared in August 2017 and continued to worsen, and in conjunction with a pulmonologist she determined that her work stress aggravated and/or contributed to the progression of her severe persistent asthma. Appellant indicated that she filed an Equal Employment Opportunity (EEO) complaint against a coworker for harassment based on disability and informed the employing establishment of unlawful and fraudulent activity. She stated that she had previously sought counseling and psychiatric care for PTSD and managing daily activities and work issues and had been able to make progress; however, recently her readjustment counselor suggested that in order to manage PTSD she would have to mitigate work stress. Appellant provided further details and a timeline starting on August 13, 2017 of her increased workload and adversarial actions by her superiors, such as denying funding, staff, and opportunities, and of the development of her alleged work-related conditions and medical treatment. She listed her medications and related that she had no sources of stress outside of her federal employment.

On October 4, 2018 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

A January 16, 2019 notice of partial acceptance of appellant's EEO complaint for investigation by the employing establishment's office of resolution management accepted her claim for hostile work environment arising from actions by the employing establishment's Deputy Director. It was accepted that the Deputy Director, K.A., implied to appellant that she had only filed a FECA claim because her leave requests were not approved. K.A. informed appellant that her position was going to be recruited at a higher grade, K.A. threatened that appellant was absent without leave, K.A. ordered appellant to clean out her desk and report for a special assignment, K.A., asked appellant to resign because she was making K.A.'s job difficult.

On March 22, 2019 an OWCP hearing representative conducted an oral hearing.

By decision dated June 28, 2019, the hearing representative modified OWCP's September 21, 2018 decision, finding that appellant established an increased workload between October 1, 2017 and August 7, 2018 as a compensable factor of federal employment. She found that the reassignment of appellant's supervisor, the work assignment to provide human resources services to a particular office, the desire to work in a preferred environment that provided particular benefits to staff, attending counseling, the invocation of family and medical leave, the filing of EEO complaints, and a 2004 PTSD diagnosis were factual, but not compensable factors of federal employment. It additionally found that her claims of working at least 60 hours a week, being informed that her position would be upgraded, having metrics that were different from others

similarly situated, supervisory malfeasance and violation of standards, misappropriated funds, threats, increased scrutiny, harassment, discrimination, retaliation, and the denial of personnel assistance, decisional power, and opportunities did not occur as alleged. The hearing representative denied appellant's claim, finding that the evidence of record was insufficient to establish causal relationship between her accepted compensable factor of federal employment and her medical condition.

On December 9, 2019 appellant requested reconsideration. She stated that harassment from her supervisor and her increased workload substantially aggravated her psychological condition, and she indicated that OWCP's June 28, 2019 decision was based on a flawed review of the evidence, a misunderstanding of the work associated with the employing establishment's human resources reorganization, false information provided by the employing establishment, and a misunderstanding of human resources laws and policies. Appellant additionally pointed out factual inaccuracies in the decision such as the description of her position at the employing establishment and she emphasized that, by not stating that, she was a director, the decision failed to grasp her level of responsibility and oversight and therefore the stress that she was under. She also contended that the decision failed to review important medical and factual evidence that she submitted and that it left out important information about her specific new responsibilities and about the funding and resources that were denied to her. Appellant related that the employing establishment attempted to contact her physician for health information, which was an example of their harassment. She explained that it was frowned upon to request wages for more than 40 hours per week, but the employing establishment's computer records would document that she worked more than 40 hours a week.

Appellant resubmitted the January 16, 2019 notice of partial acceptance of appellant's EEO complaint.

OWCP also received an October 11, 2019 notice of acceptance for investigation of appellant's EEO complaint against the employing establishment's human resources center. It related that she complained that she was discriminated against based on disability when she was forced to retire on June 14, 2019. The notice indicated that the claim met certain procedural requirements and was therefore accepted for investigation and further processing. It provided details on the investigative procedures that would be undertaken.

By decision dated January 3, 2020, OWCP denied appellant's request for reconsideration of the merits of her claim.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.²

² 5 U.S.C. § 8128(a); *see T.K.*, Docket No. 19-1700 (issued April 30, 2020); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *W.C.*, 59 ECAB 372 (2008).

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.³

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁴ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁵ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.⁶

ANALYSIS

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

Appellant filed a timely request for reconsideration on December 9, 2019 asserting that the hearing representative had improperly denied additional compensable factors of employment. OWCP denied appellant's request for reconsideration based upon a finding that she had not established with probative medical evidence that she sustained an emotional condition causally related to the accepted employment factor. However, another of the underlying issues on reconsideration was whether appellant had met her burden of proof to establish additional compensable employment factors.

Appellant submitted new argument in an attempt to establish additional compensable factors of employment. She alleged in part that reconsideration was warranted as OWCP failed to consider evidence of record which established her actual position at the employing establishment. Appellant argued that by not acknowledging her actual employment position, the decisions denying her claim failed to grasp her level of responsibility and oversight and therefore the erroneous management actions and harassment brought against her. As this argument is relevant to the underlying issue of whether appellant has established additional compensable employment factors, the Board thus finds that reconsideration of the merits of the claim is warranted. This legal

³ 20 C.F.R. § 10.606(b)(3); *see C.C.*, Docket No. 19-1622 (issued May 28, 2020); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁴ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

⁵ *Id.* at § 10.608(a); *see F.V.*, Docket No. 18-0230 (issued May 8, 2020); *see also M.S.*, 59 ECAB 231 (2007).

⁶ *Id.* at § 10.608(b); *see C.L.*, Docket No. 20-0385 (issued August 5, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

argument requires reopening of appellant's claim for merit review pursuant to the second prong of section 10.606(b).⁷

The Board also notes OWCP's January 3, 2020 decision denying appellant's reconsideration request found that the October 11, 2019 EEO document was irrelevant or immaterial, or inconsequential regarding the medical issue of causal relationship. However, this document was new, relevant, and pertinent to the underlying issue as it addresses appellant's other allegations of workplace harassment. Reopening a claim for merit review does not require a claimant to submit all evidence that may be necessary to discharge his or her burden of proof.⁸ Instead, the requirement pertaining to the submission of evidence in support of reconsideration only specifies that the evidence be relevant and pertinent and not previously considered by OWCP.⁹ Appellant's request for reconsideration, therefore, also met the third prong for obtaining merit review of her case under 20 C.F.R. § 10.606(b)(3).¹⁰

Consequently, the Board finds that OWCP improperly denied merit review pursuant to 20 C.F.R. § 10.608. The case shall therefore be remanded to OWCP for consideration of the merits of appellant's claim, to be followed by an appropriate merit decision.

CONCLUSION

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

⁷ See *M.E.*, Docket No. 20-0067 (issued October 15, 2020); *C.H.*, Docket No. 17-1065 (issued December 14, 2017); *J.W.*, Docket No. 18-0822 (issued July 1, 2020); *D.M.*, Docket No. 10-1844 (issued May 10, 2011); *Kenneth R. Mroczkowski*, 40 ECAB 855 (1989).

⁸ *P.M.*, Docket No. 19-1253 (issued January 23, 2020); *R.T.*, Docket No. 18-1263 (issued February 7, 2019).

⁹ *F.E.*, Docket No. 20-0070 (issued August 4, 2020); *Helen E. Tschantz*, 39 ECAB 1382 (1988).

¹⁰ *H.D.*, Docket No. 18-0865 (issued February 10, 2020); *M.C.*, Docket No. 17-1983 (issued August 17, 2018); *Helen E. Tschantz*, *id.*

ORDER

IT IS HEREBY ORDERED THAT the January 3, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 22, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board